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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/757,102

Applicant(s)

DESHPANDE, SACHIN GOVIND

Examiner

TARIQ S. NAJEE-ULLAH

Art Unit

2456

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The affidavit filed on October 21, 2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Kotzin, US 2005/0090242 reference.
2. **37 CFR 1.131 (b)** stated that:

The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained.

3. **MPEP 715.02** further stated that:

The 37 CFR 1.131 affidavit or declaration must establish possession of either the whole invention claimed or something falling within the claim (such as a species of a claimed genus), in the sense that the claim as a whole reads on it.

4. **MPEP 715.07** stated that:

Exhibits and models must comply with the requirements of 37 CFR 1.91 to be entered into an application file. See also MPEP § 715.07(d). A general allegation that the invention was completed prior to the date of the reference is not sufficient. Ex parte Saunders, 1883 C.D. 23, 23 O.G. 1224 (Comm'r Pat. 1883). Similarly, a declaration by the inventor to the effect that his or her invention was conceived or reduced to practice prior to the reference date, without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131. 37 CFR 1.131(b) requires that original exhibits of drawings or records, or photocopies thereof, accompany and form part of the affidavit or declaration or their absence satisfactorily explained.

The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by

proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.13 l(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred.").

A conception of an invention, though evidenced by disclosure, drawings, and even a model, is not a complete invention under the patent laws, and confers no rights on an inventor, and has no effect on a subsequently granted patent to another, **UNLESS THE INVENTOR FOLLOWS IT WITH REASONABLE DILIGENCE BY SOME OTHER ACT**, such as an actual reduction to practice or filing an application for a patent. Automatic Weighing Mach. Co. v. Pneumatic Scale Corp., 166 F.2d 288, 1909 C.D. 498, 139 O.G. 991 (1st Cir. 1909).

5. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Kotzin reference to either a constructive reduction to practice or an actual reduction to practice. No actual evidence is provided to establish the diligence from the date of conception to a date prior to the date of reduction to practice of the Kotzin reference. The evidence of conception that is provided to support the applicant's statement of the date of conception of June 2002 is an invention disclosure document dated July 16, 2002. All figures and drawings have been redacted and are not part of the disclosure as submitted. There is a period of 18 months between the stated date of conception and the application filing date of January 14, 2004. Hence, applicant's diligence from the date of June 2002 to the date of reduction to practice of the Kotzin reference is not shown.

6. **37 CFR 1.132** stated that:

Affidavits or declarations traversing rejections or objections. When any claim of an application or a patent under reexamination is rejected or objected to, any

evidence submitted to traverse the rejection or objection on a basis not otherwise provided for must be by way of an oath or declaration under this section.

7. **MPEP 715.01** further stated that:

The purpose of a 37 CFR 1.131 affidavit or declaration is to overcome a prior art rejection by proving invention of the claimed subject matter by applicant prior to the effective date of the reference or activity relied upon in the rejection.

In some situations, an applicant may, alternatively, be able to overcome prior art rejections relying on references or activities which are available as prior art under 35 U.S.C. 102(a) or references which are available as prior art under 35 U.S.C. 102(e) by proving that the subject matter relied upon in the reference or activity was applicant's own invention.

Similarly, where the reference relied upon in a 35 U.S.C. 103 rejection qualifies as prior art only under 35 U.S.C. 102(f) or (g), or, in an application filed on or after November 29, 1999, under 35 U.S.C. 102(e), applicant may be able to overcome this rejection by proving that the subject matter relied upon and the claimed invention were commonly owned or subject to common assignment at the time the later invention was made. See MPEP § 706.02(l)(1) through § 706.02(l)(3).

8. **MPEP 2138.03** stated that:

"The courts have consistently held that an invention, though completed, is deemed abandoned, suppressed, or concealed if, within a reasonable time after completion, no steps are taken to make the invention publicly known. Thus failure to file a patent application; to describe the invention in a publicly disseminated document; or to use the invention publicly, have been held to constitute abandonment, suppression, or concealment." *Correge v. Murphy*, 705 F.2d 1326, 1330, 217 USPQ 753, 756 (Fed. Cir. 1983) (quoting *International Glass Co. v. United States*, 408 F.2d 395, 403, 159 USPQ 434, 441 (Ct. Cl. 1968)). In *Correge*, an invention was actually reduced to practice, 7 months later there was a public disclosure of the invention, and 8 months thereafter a patent application was filed. The court held filing a patent application within 1 year of a public disclosure is not an unreasonable delay, therefore reasonable diligence must only be shown between the date of the actual reduction to practice and the public disclosure to avoid the inference of abandonment.

Suppression or concealment need not be attributed to the inventor. *Peeler v. Miller*, 535 F.2d 647, 653-54, 190 USPQ 117, 122 (CCPA 1976) ("four year delay

from the time an inventor ... completes his work ... and the time his assignee-employer files a patent application is, prima facie, unreasonably long in an interference with a party who filed first"); *Shindelar v. Holdeman*, 628 F.2d 1337, 1341-42, 207 USPQ 112, 116-17 (CCPA 1980) (A patent attorney's workload will not preclude a holding of an unreasonable delay—a total of 3 months was identified as possible of excuse in regard to the filing of an application.).

9. **MPEP 2138.06** stated that:

The diligence of 35 U.S.C. 102(g) relates to rea-sonable "attorney-diligence" and "engineering-diligence" (*Keizer v. Bradley*, 270 F.2d 396, 397, 123 USPQ 215, 216 (CCPA 1959)), which does not require that "an inventor or his attorney ... drop all other work and concentrate on the particular invention involved...." *Emery v. Ronden*, 188 USPQ 264, 268 (Bd. Pat. Inter. 1974). An applicant must account for the entire period during which diligence is required. *Gould v. Schawlow*, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966) (Merely stating that there were no weeks or months that the invention was not worked on is not enough.); *In re Harry*, 333 F.2d 920, 923, 142 USPQ 164, 166 (CCPA 1964) (statement that the subject matter "was diligently reduced to practice" is not a showing but a mere pleading). A 2-day period lacking activity has been held to be fatal. *In re Mulder*, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983) (37 CFR 1.131 issue); *Fitzgerald v. Arbib*, 268 F.2d 763, 766, 122 USPQ 530, 532 (CCPA 1959) (Less than 1 month of inactivity during critical period. Efforts to exploit an invention commercially do not constitute diligence in reducing it to practice. An actual reduction to practice in the case of a design for a three-dimensional article requires that it should be embodied in some structure other than a mere drawing.); *Kendall v. Searles*, 173 F.2d 986, 993, 81 USPQ 363, 369 (CCPA 1949) (Diligence requires that applicants must be specific as to dates and facts.).

The period during which diligence is required must be accounted for by either affirmative acts or acceptable excuses. *Rebstock v. Flouret*, 191 USPQ 342, 345 (Bd. Pat. Inter. 1975); *Rieser v. Williams*, 225 F.2d 419, 423, 118 USPQ 96, 100 (CCPA 1958) (Being last to reduce to practice, party cannot prevail unless he has shown that he was first to conceive and that he exercised reasonable diligence during the critical period from just prior to opponent's entry into the field); *Griffith v. Kanamaru*, 816 F.2d 624, 2USPQ2d 1361 (Fed. Cir. 1987) (Court generally reviewed cases on excuses for inactivity including vacation extended by ill health and daily job demands, and held lack of university funding and personnel are not acceptable excuses.); *Litchfield v. Eigen*, 535 F.2d 72, 190 USPQ 113 (CCPA 1976) (budgetary limits and availability of animals for testing not sufficiently described); *Morway v. Bondi*, 203 F.2d 741, 749, 97 USPQ

318, 323 (CCPA 1953) (voluntarily laying aside inventive concept in pursuit of other projects is generally not an acceptable excuse although there may be circumstances creating exceptions); *Anderson v. Crowther*, 152 USPQ 504, 512 (Bd. Pat. Inter. 1965) (preparation of routine periodic reports covering all accomplishments of the laboratory insufficient to show diligence); *Wu v. Jucker*, 167 USPQ 467, 472-73 (Bd. Pat. Inter. 1968) (applicant improperly allowed test data sheets to accumulate to a sufficient amount to justify interfering with equipment then in use on another project); *Tucker v. Natta*, 171 USPQ 494, 498 (Bd. Pat. Inter. 1971) ("[a]ctivity directed toward the reduction to practice of a genus does not establish, prima facie, diligence toward the reduction to practice of a species embraced by said genus"); *Justus v. Appenzeller*, 177 USPQ 332, 340-1 (Bd. Pat. Inter. 1971) (Although it is possible that patentee could have reduced the invention to practice in a shorter time by relying on stock items rather than by designing a particular piece of hardware, patentee exercised reasonable diligence to secure the required hardware to actually reduce the invention to practice. "[I]n deciding the question of diligence it is immaterial that the inventor may not have taken the expeditious course....").

10. The declaration filed on October 21, 2008 under 37 CFR 1.132 is insufficient to overcome the rejection(s) of claims 1-29 based upon US Patent Application Publication 2004/0267876 to Kakivaya et al in view of US Patent Application Publication 2005/0090242 to Kotzin et al applied under 35 USC 103 (a) as set forth in the last Office action because: The declaration and attached exhibits do not prove that the subject matter relied upon and the claimed invention were commonly owned or subject to common assignment at the time the later invention was made which is the function of the declaration under 37 CFR 1.132. If this declaration is relied upon as evidence for the affidavit filed on October 21, 2008 under 37 CFR 1.131 by the inventor, it is ineffective to overcome the Kotzin, US 2005/0090242 reference. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Kotzin reference. There is a period of 18 months between the stated date of conception and the application filing date of January 14, 2004. The supportive

evidence provided fails to show necessary diligence during the period from the stated date of conception and the application filing date of January 14, 2004. Even if Examiner accepts August 13, 2003 as the proposed date of conception (instead of June 2002 as stated by the inventor), the evidence presented still fails to account for necessary diligence for the complete period of time from the stated date of conception and the application filing date of January 14, 2004 demonstrated by either affirmative acts or acceptable excuses.

Response to Arguments

11. Regarding the rejection of claims 1-29 under USC 103 (a), Applicant argues that Kotzin, US 2005/0090242, does not qualify as prior art. Applicant's arguments filed on October 21, 2008 regarding Kotzin have been fully considered but they are not persuasive. The affidavit and declaration filed on October 21, 2008 under 37 CFR 1.131 and 37 CFR 1.132 have been considered but are ineffective and insufficient to overcome the Kotzin reference. Examiner maintains use of Kotzin as prior art.

12. Applicant's arguments filed October 21, 2008, with respect to the rejection(s) of claim(s) 2, 11, 14, 21 and 29 under 35 USC 103(a) as being unpatentable over Kakivaya-Kotzin (the combination of US Patent Application Publication 2004/0267876 to Kakivaya et al in view of US Patent Application Publication 2005/0090242 to Kotzin et al under 35 USC 103(a)), as applied to claims 1, 10, 13, 20 and 28, and further in view of Fantaske 2002/0045435 (Fantaske hereinafter), have been fully considered and are not persuasive. Applicant argues that Fantaske does not teach "request [to discover the

server] is further made using a randomized exponential backoff strategy" prior to a connection being made. Examiner respectfully disagrees. Fantaske is relied upon to teach using randomly selected exponential backoff interval prior to connection being established (Fantaske, pg. 3-4, par. [0037]). Fantaske is not relied upon to teach a *request [to discover the server]*. Kakivaya is relied upon to teach initiating a request at the client to discover the server (Kakivaya, Pg. 1, par. [0005]).

Applicant argues that the combination of US Patent Application Publication 2004/0267876 to Kakivaya et al in view of US Patent Application Publication 2005/0090242 to Kotzin et al under 35 USC 103(a)), as applied to claims 1, 10, 13, 20 and 28, and further in view of Fantaske 2002/0045435 regarding the rejection(s) of claim(s) 2, 11, 14, 21 and 29 under 35 USC 103(a) was done without complete analysis supporting the rejection(s) being made explicit. Examiner respectfully disagrees. For the purposes of clarity, Examiner provides additional rationale for the combination of Kakivaya-Kotzin-Fantaske under 35 USC 103(a).

To provide the discovery request of Kakivaya with a the randomly selected exponential backoff would have been obvious to one of ordinary skill in the art, in view of the teachings of Fantaske, since all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods (adding the appropriate software code) with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art at the time of the invention, i.e., one skilled in the art would have recognized that the randomly selected exponential backoff used in

Fantaske would allow the service discovery protocol of Kakivaya in combination with Kotzin's establishing a common link with a second device after discovery acknowledgement to avoid multiple requests being sent to the server simultaneously, for example, to reduce the likelihood of collisions during the client-server discovery process.

In conclusion, in an effort to better place the claims in condition for allowance, Examiner encourages further modification of claim language to include language that is more precisely descriptive and provides a more clear representation of what the Applicant presents as the invention in the specification in a manner which overcomes the prior art as presented. Examiner also reminds Applicant that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Restatements of the rejections from the previous office action are repeated below as a courtesy.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 2, 11, 14, 21, and 29 are rejected under 35 USC 103(a) as being unpatentable over Kakivaya-Kotzin, as applied to claims 1, 10, 13, 20 and 28 restated below, and further in view of Fantaske 2002/0045435 (Fantaske hereinafter).

Regarding claims 2, 11, 14, 21, and 29, Kakivaya-Kotzin discloses the invention substantially as described in claims 1, 10, 13, 20, and 28 restated below. Kakivaya-Kotzin does not teach **using a randomized exponential backoff strategy**.

Fantaske teaches **using a randomized exponential backoff strategy** (Fantaske, pg. 3-4, par. [0037]; randomly selected exponential backoff interval prior to connection being established). Kakivaya-Kotzin and Fantaske are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Fantaske exponential random-backoff delay with Kakivaya's discovery protocol and Kotzin's establishing a common link with a second device after discovery acknowledgement. The suggestion/motivation would have been to determine whether the access point is communicating with another wireless terminal (Fantaske, pg. 3-4, par. [0037]).

15. Examiner maintains all other claim rejections of claims 1, 3-10, 12-13, 15-20 and 22-28 under USC 103(a) presented in the previous office action mailed March 3, 2008. A restatement of those claim rejections that considers Applicant's amendments to claims 20-29 follows below.

16. Claims 1, 3-6, 12-13, 15-19, 20, and 22-24 are rejected under 35 U.S.C. 103 (a) as being unpatentable over US Patent Application Publication 2004/0267876 to Kakivaya et al (Kakivaya hereinafter) further in view of US Patent Application Publication 2005/0090242 to Kotzin et al (Kotzin hereinafter).

Regarding claim 1, Kakivaya teaches **initiating a request at the client to discover the server** (Kakivaya, Pg. 1, par. [0005]), **wherein the request is made using a multicast procedure** (Kakivaya, Pg. 1, par. [0005]); **receiving a response to the request from the server after a random delay time** (Kakivaya, Pg. 9, par. [0199-0200]; find response is sent after random delay time.). Kakivaya does not teach **establishing a connection with the server after receiving the response.**

Kotzin teaches **establishing a connection with the server after receiving the response** (Kotzin, Pg. 5, par. [0040]). Kakivaya and Kotzin are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Kotzin's establishing a common link with a second device after discovery acknowledgement with Kakivaya's discovery protocol. The suggestion/motivation would have been to establish two way communication between devices (Kotzin, pg. 1, par. [0002]).

Regarding claim 13, Kakivaya teaches **server coupled to a network** (Kakivaya, fig. 1); **and a client coupled to the network** (Kakivaya, fig. 1), **wherein the client is configured to selectively provide a request on the network to discover the server** (Kakivaya, Pg. 1, par. [0005]), **wherein the client is configured to selectively provide programming content to a viewer** (Kakivaya, pg. 13, par. [0302]), **and wherein the request is a multicast procedure** (Kakivaya, Pg. 1, par. [0005]). Kakivaya does not

teach **selectively establish a connection with the server after receiving a response to the request from the server.**

Kotzin teaches **selectively establish a connection with the server after receiving a response to the request from the server** (Kotzin, Pg. 5, par. [0040]). Kakivaya and Kotzin are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Kotzin's establishing a common link with a second device after discovery acknowledgement with Kakivaya's discovery protocol. The suggestion/motivation would have been to establish two way communication between devices (Kotzin, pg. 1, par. [0002]).

Regarding claim 20, Kakivaya teaches **a computer readable medium storing a computer program product for implementing within a computer system a method for discovering and connecting to a server on the networked system, the computer program code means comprised of executable code for** (Kakivaya, Pg. 13, par. [0300]): **initiating a request at a client to discover a server** (Kakivaya, Pg. 1, par. [0005]), **wherein the request is made using a multicast procedure** (Kakivaya, Pg. 1, par. [0005]); **receiving a response to the request from the server after a random delay time** (Pg. 9, par. [0199-0200]). Kakivaya does not teach **establishing a connection with the server after receiving the response.**

Kotzin teaches **establishing a connection with the server after receiving the response** (Kotzin, Pg. 5, par. [0040]). Kakivaya and Kotzin are analogous art because

they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Kotzin's establishing a common link with a second device after discovery acknowledgement with Kakivaya's discovery protocol. The suggestion/motivation would have been to establish two way communication between devices (Kotzin, pg. 1, par. [0002]).

Regarding claims 3 and 16, Kakivaya-Kotzin disclose the invention substantially as described in claims 1 and 13 above, including **wherein the response includes information about a server IP address and TCP port where the client can make the connection with the server** (Kakivaya, Pg. 3, par. [0042]).

Regarding claims 4-5, 17-18, and 22-23, Kakivaya-Kotzin discloses the invention substantially as described in claims 1, 13, and 20 above, including **wherein the client is a television that is configured to provide programming content** (Kakivaya, pg. 2, par. [0034]) and **the server is a computer device** (Kakivaya, pg. 2, par. [0034]).

Regarding claims 6 and 24, Kakivaya-Kotzin discloses the invention substantially as described in claims 1 and 20 above, including receiving **a second response to the request from a second server after the random delay time** (Kakivaya, pg. 10, par. [0223] teaches sending multiple responses to a discovery request, pg. 3, par. [0037]; teaches multiple servers, i.e. first, second server, etc.).

Regarding claims 12 and 19, Kakivaya-Kotzin discloses the invention substantially as described in claims 1 and 13 above, including wherein **the request**

includes a random identifier that is repeated in the response (Kakivaya, pg. 1, par. [006-007]; teaches a unique identifier, i.e. random identifier).

Regarding claim 15 Kakivaya-Kotzin discloses the invention substantially as described in claim 13 above, including **wherein the network is a home network** (Kakivaya, pg. 2, par. [0033]).

17. Claims 10 and 28 are rejected under 35 USC 103(a) as being unpatentable over Kakivaya-Kotzin, as applied to claims 1 and 20 above, and further in view of Harvey et al 2004/0054807 (Harvey hereinafter).

Regarding claims 10 and 28, Kakivaya-Kotzin discloses the invention substantially as described in claims 1 and 20 above. Kakivaya teaches **initiating a second request at the client to discover the server** (Kakivaya, Pg. 1, par. [0005]), **wherein the second request is made using a multicast procedure** (Kakivaya, Pg. 1, par. [0005]); **receiving a subsequent response to the second request from the server after a random delay time** (Kakivaya, Pg. 9, par. [0199-0200]; find response is sent after random delay time.).

Kakivaya-Kotzin does not teach **discovering a network disconnect and establishing a second connection with the server**. Harvey teaches **discovering a network disconnect** (Harvey, pg. 8-9, par. [0103]); **and establishing a second connection with the server** (Harvey, pg. 8-9, par. [0103]). Kakivaya-Kotzin and Harvey are analogous art because they are from the same field of endeavor of computer networks. At the time of the invention, it would have been obvious to a

person of ordinary skill in the art to use Harvey's reconnection method with Kakivaya's discovery protocol and Kotzin's establishing a common link with a second device after discovery acknowledgement. The suggestion/motivation would have been to improve the system and method for creating overlay networks (Harvey, pg. 2, par. [0015]).

18. Claims 7-9 and 25-27 are rejected under 35 USC 103(a) as being unpatentable over Kakivaya-Kotzin, as applied to claims 1, 6, 20, and 24 above, and further in view of Rasheed et al 2004/0064574 (Rasheed hereinafter).

Regarding claims 7 and 25, Kakivaya-Kotzin disclose the invention substantially as described in claims 6 and 24 above. Kakivaya-Kotzin does not teach **determining not to connect to the second server**.

Rasheed teaches claim 7, **determining not to connect to the second server** (Rasheed, fig. 1, pg. 2, par. [0020], "...deny the prioritized data transfer session (PDTs) request..."). Kakivaya-Kotzin and Rasheed are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Rasheed's server connection method with Kakivaya's discovery protocol and Kotzin's establishing a common link with a second device after discovery acknowledgement. The suggestion/motivation would have been to control the quality of data transfer of media between network devices (Rasheed, pg. 2, par. [0015]).

Regarding claims 8 and 26, Kakivaya-Kotzin-Rasheed disclose the invention substantially as described in claims 7 and 25 above, including, **wherein determining**

not to connect to the second server is based on a characteristic of the server with which the client establishes a connection (Rasheed, fig. 1, pg. 2, par. [0020], The policy manager may deny the prioritized data transfer session (PDTs) request based on policy rules, i.e. determine not to connect to the server. The PDTs request includes data to specify the determined matching data transmission characteristic and/or matching data transfer protocol, and/or matching media format.).

Regarding claims 9 and 27, Kakivaya-Kotzin-Rasheed disclose the invention substantially as described in claims 7 and 25 above, including **wherein the characteristic of the server is a version of the server contained in the response** (Rasheed, fig. 1, pg. 2, par. [0020], The policy manager may deny the prioritized data transfer session (PDTs) request based on policy rules, i.e. determine not to connect to the server. The PDTs request includes data to specify the determined matching data transmission characteristic and/or matching data transfer protocol, and/or matching media format. Examiner interprets this characteristic or version to be the type of data transmission characteristic and/or matching data transfer protocol, and/or matching media format of the media server application in fig. 1 matching the request.).

Conclusion

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARIQ S. NAJEE-ULLAH whose telephone number is (571)270-5013. The examiner can normally be reached on Monday through Friday 8:30 - 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/TN/

/Yasin M Barqadle/

Primary Examiner, Art Unit 2456